Mohamad Yazri bin Minhat v Public Prosecutor

COURT OF APPEAL (KUALA LUMPUR) — CRIMINAL APPEAL NO W–05–11 OF 1999
GOPAL SRI RAM, ABDUL KADIR SULAIMAN AND MOHD GHAZALI JJCA
11 SEPTEMBER 2002

Criminal Law *— Dangerous Drugs Act (Malaysia) — s 39B(1)(a) — Accused transporting drugs from one point to another — Whether accused was a trafficker*

Criminal Procedure *— Charge — Amendment — Amendment not to cause any prejudice to the accused — Amendment not to result in injustice to the accused*

Evidence *— Identification evidence — Turnbull guidelines — Whether such guidelines were inflexible rules without exceptions whatsoever — Whether trial judge was correct in his assessment of the identification evidence — Whether lies and the fabrication of evidence would support identification evidence*

The appellant was convicted for the offence of trafficking in dangerous drugs under the Dangerous Drugs Act 1952 and was sentenced to death. He appealed to the Court of Appeal. The appellant's counsel attacked the conviction on three grounds. Firstly, counsel submitted that the failure of the trial judge to address his mind to the guidelines in *R v Turnbull & Ors* [1976] 3 All ER 549 was a serious misdirection. The defence argued that had the trial judge addressed himself to *Turnbull*, he would have approached PW15's evidence with caution, PW15 being the police officer tasked with carrying out surveillance on the appellant. Secondly, counsel submitted that the trial judge had misdirected himself by finding the appellant guilty of trafficking by transportation. Counsel argued that the evidence led by the prosecution only established possession. Thirdly, counsel submitted that the trial judge was wrong to amend the charge as originally framed by the public prosecutor.

Held, dismissing the appeal:

(1) The English case of *Turnbull* did not lay down any proposition of law embodied in concrete. The *Turnbull* guidelines are just guidelines and each case depends on its own facts. What was said in *Turnbull* does not amount to inflexible rules with no exceptions whatsoever. In the instant case, the trial judge accepted PW15 as a witness of truth. He had directed his mind to the nature and quality of cross-examination to which PW15 was subjected. His consideration of the evidence also revealed that the defence had failed to challenge PW15's evidence on the identification and that certain evidence led by the defence was a tissue of lies. It is a settled principle of law that the telling of lies or concocting of evidence is a strong circumstance upon which the prosecution may rely against the accused. Here, the fabrication and lies

convinced the trial judge of the correctness and truthfulness of PW15's testimony (see pp 245H–246A, C–D, H–247B). A

(2) The fact that the accused is transporting a quantity of drugs from one point to another does not make him a trafficker. Whether he is a trafficker in those circumstances depends on the facts and circumstances of the given case, including the quantity of the drugs and any transaction the accused proposed to enter into. Applying the common sense approach laid down by Lord Diplock in *Ong Ah Chuan v Public Prosecutor; Koh Chai Cheng v Public Prosecutor* [1981] 1 MLJ 64, the trial judge's conclusion that the appellant was guilty of trafficking was abundantly justified (see pp 249H–250A); *Ong Ah Chuan v Public Prosecutor; Koh Chai Cheng v Public Prosecutor* [1981] 1 MLJ 64 and *Chow Kok Keong v Public Prosecutor* [1998] 2 MLJ 337 followed. B C

(3) Section 158 of the Criminal Procedure Code confers wide powers on a trial court at any level to amend the charge. What is important is that the amendment should not cause any prejudice to the accused or result in an injustice to him. In the instant case, the amendment to the charge was justified. There was nothing the trial judge put in the charge which was not already there in the prosecution's case. On the whole, the Court of Appeal was unable to detect any weaknesses in the prosecution's case or the manner in which the prosecution was conducted (see p 250E–H). D E

[Bahasa Malaysia summary

Perayu telah disabitkan dengan kesalahan mengedar dadah berbahaya di bawah Akta Dadah Berbahaya 1952 dan telah dijatuhkan hukuman mati. Beliau telah merayu ke Mahkamah Rayuan. Peguam perayu membidas sabitan tersebut atas tiga alasan. Pertama, peguam berhujah bahawa kegagalan hakim perbicaraan untuk menumpukan minda beliau kepada panduan-panduan dalam *R v Turnbull & Ors* [1976] 3 All ER 549 adalah satu salah arah yang serius. Pihak pembelaan berhujah bahawa jika hakim perbicaraan telah menumpukan perhatian kepada kes *Turnbull*, beliau akan meneliti keterangan PW15 dengan berhati-hati, PW15 seorang pegawai polis yang ditugaskan untuk mengawasi perayu. Kedua, peguam berhujah bahawa hakim perbicaraan telah salah arahkan dirinya dengan mendapati perayu bersalah kerana mengedar dengan pengangkutan. Peguam berhujah bahawa keterangan yang dikemukakan oleh pihak pendakwaan hanya membuktikan milikan. Ketiga, peguam berhujah bahawa hakim perbicaraan terkhilaf kerana meminda pertuduhan asal yang dirangka oleh pendakwa raya. F G H

Diputuskan, menolak rayuan tersebut: I

(1) Kes Inggeris *Turnbull* tidak menyebut tentang apa-apa saranan undang-undang yang terkandung secara kukuh. Panduan-

panduan *Turnbull* hanya adalah panduan-panduan dan setiap kes bergantung kepada fakta-faktanya sendiri. Apa yang disebut dalam *Turnbull* tidak membentuk peraturan-peraturan yang tidak boleh diubah tanpa apa-apa pengecualian. Dalam kes semasa hakim perbicaraan menerima PW15 sebagai seorang saksi yang boleh dipercayai. Beliau mengarahkan minda beliau kepada sifat dan kualiti pemeriksaan balas PW15. Pertimbangan beliau mengenai keterangan tersebut juga mendedahkan bahawa pihak pembelaan gagal untuk mencabar keterangan PW15 setelah dikenalpasti dan bahawa keterangan tertentu yang dikemukakan oleh pihak pembelaan adalah tipu belaka. Ia adalah prinsip undang-undang tetap bahawa menipu atau mereka-reka keterangan adalah keadaan yang kukuh untuk pihak pendakwaan bergantung terhadap tertuduh. Di sini, rekaan dan penipuan tersebut meyakinkan hakim perbicaraan tentang ketepatan dan kebenaran testimoni PW15 (lihat ms 245H–246A, C–D, H–247B).

(2) Hakikat bahawa tertuduh mengedar sejumlah dadah dari satu tempat ke tempat lain tidak menjadikan beliau seorang pengedar. Sama ada beliau seorang pengedar dalam keadaan sedemikian bergantung kepada fakta-fakta dan keadaan-keadaan dalam kes yang diberikan, termasuklah jumlah dadah dan apa-apa transaksi yang tertuduh bercadang melakukan. Dengan menggunakan pendekatan akal seperti yang dinyatakan oleh Lord Diplock dalam *Ong Ah Chuan v Public Prosecutor; Koh Chai Cheng v Public Prosecutor* [1981] 1 MLJ 64, keputusan hakim perbicaraan bahawa perayu bersalah kerana mengedar dadah adalah dijustifikasikan (lihat ms 249H–250A); *Ong Ah Chuan v Public Prosecutor; Koh Cheng Chai v Public Prosecutor* [1981] 1 MLJ 64 dan *Chow Kok Keong v Public Prosecutor* [1998] 2 MLJ 337 diikut.

(3) Seksyen 158 Kanun Acara Jenayah memberikan kuasa yang luas kepada mahkamah perbicaraan di mana-mana peringkat untuk meminda pertuduhan. Apa yang penting adalah bahawa pindaan tidak sepatutnya menyebabkan apa-apa prejudis kepada tertuduh atau mengakibatkan ketidakadilan kepada beliau. Dalam kes semasa, pindaan kepada pertuduhan tersebut dijustifikasikan. Tiada apa-apa yang hakim perbicaraan telah tambah yang memang telah ada dalam kes pihak pendakwaan. Pada keseluruhannya, Mahkamah Rayuan tidak dapat mengenalpasti kelemahan kes pihak pendakwaan atau cara pendakwaan tersebut dikendalikan (lihat ms 250E–H).]

Notes

For cases on s 39B(1)(a) of the Dangerous Drugs Act (Malaysia), see 4 *Mallal's Digest* (4th Ed, 2000 Reissue), paras 167–242.

For cases on amendment of charges, see 5 *Mallal's Digest* (4th Ed, 2001 Reissue), para 871.

For cases on the *Turnbull* guidelines, see 7 *Mallal's Digest* (4th Ed, 2001 Reissue), paras 1569–1570.

Cases referred to

Chow Kok Keong v Public Prosecutor [1998] 2 MLJ 337 (folld)
Ong Ah Chuan v Public Prosecutor; Koh Chai Cheng v Public Prosecutor [1981] 1 MLJ 64 (folld)
PP v Hairul Din bin Zainal Abidin [2001] 6 MLJ 146 (refd)
PP v Mohd Farid bin Mohd Sukis & Anor [2002] 3 MLJ 401 (refd)
R v Turnbull & Ors [1976] 3 All ER 549 (refd)

Legislation referred to

Criminal Procedure Code s 158
Dangerous Drugs Act 1952

Appeal from: Criminal Trial No 45–29–1997 (High Court, Kuala Lumpur).

Bachan Singh (*Bachan & Kartar*) for the appellant.
Anselm Charles Fernandis (Deputy Public Prosecutor) (Attorney-General's Chambers) for the respondent.

Gopal Sri Ram JCA: This is the judgment of the court.

The appellant before us was convicted for the offence of trafficking in dangerous drugs. He was sentenced to the mandatory death penalty prescribed by the Dangerous Drugs Act 1952 ('the Act').

At the outset, we should mention that the drug concerned is cannabis weighing about 133kg. The importance of the weight will become apparent later in this judgment. But we must first hearken to the facts.

PW15 is a lance corporal in the police force. On 17 January 1997 at about 4pm, he received instructions from his superior, Inspector Mohan, to carry out surveillance on a male Malay who was using car registration number WED 577 at Kampong Chubadak, Sentul Pasar, Kuala Lumpur. It would appear that Inspector Mohan did not play any other role in the matter and it therefore comes as no surprise that he was not called by the prosecution.

Acting upon the instructions to which we have referred, PW15 proceeded to the area in question and commenced his surveillance. At about 4.30pm on 17 January 1997, PW15 saw the target vehicle being driven by a male Malay who was later identified as the appellant. PW15 then followed the target vehicle. He saw it being driven into the front of a house in Kampong Chubadak. He saw the appellant entering the house. The appellant wore a baseball cap. Having noticed these things, PW15 continued to hold surveillance. At about 9.45pm that night he saw the appellant emerging from the house.

The appellant went to the target vehicle. He opened its doors. He partially entered it. PW15 could see the bent body of the appellant. He

observed the appellant busying himself with something inside the car. This activity went on for about 20 minutes. It is apparent from the evidence that PW15 had kept his eyes peeled to the appellant's activity. After a lapse of about 20 minutes, the appellant re-emerged from the target car and once again entered the house. PW15 then conveyed the results of his observation to his superiors.

In the early hours of 18 January 1997 — in the evidence it is stated as 3.15am — a police party led by PW17 raided the house in question. They were met by the appellant's mother at the front door and were permitted to enter. They proceeded to a room in the house. They knocked on its door. There was no response. So they kicked it open and entered. The appellant who was obviously asleep awoke. He was asked for his identity card. In response he pointed to a bag in the room. A search of that bag revealed a key. The police used that key to gain access into the target vehicle. They found in it, both in the front and back seats, as well as in the boot, clear plastic bags containing substances which on subsequent chemical analysis was found to be cannabis. The appellant was arrested, charged and convicted of the offence which we have already described.

Before us, a number of grounds were succinctly argued by learned counsel for the appellant. We do not think that we would be doing any injustice if we summarize his complaints under three broad headings namely:

(1) the quality of the identification evidence;

(2) the learned judge misdirected himself when he found the appellant guilty of trafficking by transportation; and lastly

(3) the learned judge was wrong in amending the charge originally framed by the public prosecutor.

We will deal with each of these grounds in succession.

The identification point

Now, the essence of counsel's argument is that the judgment of the learned judge is bereft of any reference to the guidelines regarding identification in *R v Turnbull & Ors* [1976] 3 All ER 549. It is submitted that the failure of the learned judge in the present case to address his mind to the principles in *Turnbull* is a serious misdirection. Counsel then drew our attention to several passages in the judgment relating to the issue of identification. Mr Gurbachan said that the identification is based on evidence of a fleeting glance. He said that there is here a whiff of erroneous identification. His argument is that if the learned judge had addressed himself to the case of *Turnbull*, he would have approached PW15's evidence with the caution warranted in the circumstances.

Now, the English case of *Turnbull* did not lay down any proposition of law embodied in concrete. As all members of the criminal bar are aware, the several propositions in *Turnbull* are known as the '*Turnbull* guidelines'. And that is what they really are. They are just guidelines and each case depends

on its own facts. What was said in *Turnbull* does not amount to inflexible rules with no exceptions whatsoever.

That much is clear from the following passage in *Archbold Criminal Pleadings Evidence and Practice* (2002 Ed) p 1307:

> The guidelines should not be applied inflexibly: *R v Keane* (1977) 65 Cr App Rep 247. No particular form of words is required: *Turnbull*, ante 14-2. The basic principle is the special need for caution when the issue turns on evidence of visual identification.

Sarkar on Evidence (15th Ed, Reprint 2001) p 219 is more or less of the same opinion:

> What weightage should be given to the evidence of identification of witnesses who identified the accused for the first time in court is a question of fact and no straight jacket formula applicable to all cases can be laid down (*Madhukar Damu Patil v State of Maharashtra* 1966 Cri LJ 1062, 1065 (Bom)).

In the present instance, the learned judge accepted PW15 as a witness of truth. He directed his mind to the nature and quality of the cross-examination to which PW15 was subjected. His consideration of the evidence reveals two telling points of crucial importance.

The first of these is the failure of the defence to challenge PW15's evidence on the identification at the 9.45pm incident. To recall, the accused had briefly entered the target car at about the given time. It is a reasonable inference from this evidence that he would have seen the offending articles in the car. Yet he did nothing except to re-enter his home.

The second point is more serious. It emerges from the defence evidence led at the trial. We must advert to it briefly. The appellant in the course of the prosecution's case tendered a receipt from a motor workshop. It was shown to the investigating officer during his cross-examination and put in and marked for identification only. It was later properly marked as an exhibit when the appellant's father gave evidence during the defence case. What was sought to be proved by this receipt was that the target vehicle had been in the workshop in question on 17 January 1997 and had been picked up by the appellant's father. The point sought to be made was that it could not have been the appellant driving the target vehicle at the material time. The prosecution faced with this piece of evidence applied to call the mechanic, the maker of the document, in rebuttal. That application was opposed. But the learned judge permitted the calling of the evidence. We think that he was correct in doing so. As it turned out, the exhibit proved to be suspect. The judge found the whole of the evidence relating to the alleged repair of the target vehicle to be a tissue of lies. We think that he was entitled to arrive at that conclusion. The evidence certainly warrants it.

It is a settled principle of the law of evidence that the telling of lies or concocting of evidence is a strong circumstance upon which the prosecution may rely against the accused. Once again, we quote from *Archbold* on the relevance of lies to the issue of identification.

> [L]ies told by a defendant may provide support for identification evidence if the judge is satisfied that the lies are deliberate and related to the issue. The

A jury must be given a direction along the general lines indicated in *R v Lucas* 73 Cr App Rep 159 at p 162, *R v Goodway* 98 Cr App Rep 11.

Here the learned judge, as we already said, directed himself quite rightly on the fabrication point. Consequently, the evidence of identification taken in its proper context and given its appropriate weight flew to its target. It B convinced the learned judge of the correctness and truthfulness of PW15's testimony. It left him in no doubt. Consequently, we find no merit in the complaint by learned counsel for the appellant that the failure of the learned judge to refer to the '*Turnbull* Guidelines' merits appellate intervention.

C *The possession point*

Now to the second ground of complaint. The gist of the argument here is that the evidence led by the prosecution put at its highest only established possession. And counsel quite rightly said that mere possession (or what Augustine Paul J in *Public Prosecutor v Hairul Din bin Zainal Abidin* [2001] 6 MLJ 146 and *PP v Mohd Farid bin Mohd Sukis & Anor* [2002] 3 MLJ 401 D appropriately described as 'passive possession') is not trafficking. There are numerous cases that illustrate this point. We have been referred to several of them. We trust that we would be forgiven if we do not mention all of them here. They are decisions on their own facts. They turn on the failure by the prosecution in each of them to establish trafficking.

E But there is one authority cited to us by Mr Gurbachan Singh which we think we ought to mention. It is *Chow Kok Keong v Public Prosecutor* [1998] 2 MLJ 337. The relevant passage appears at p 348 of the report. It is in the judgment of Edgar Joseph Jr, a judge of exceptional ability and learning. The passage reads as follows:

F The judge, however, appears to have overlooked the later Supreme Court case of *Cohen Lorraine Philis & Anor v PP* [1989] 3 MLJ 289, where the court (per Abdul Hamid LP) held that in a prosecution for trafficking in dangerous drugs, a defence of self-consumption might be *available* even where the quantity of drugs involved was in excess of the statutory minimum prescribed under s 37(da) of the Act, but whether it could succeed would depend upon G the particular circumstances of each case. And, in the subsequent case of *Ng Chai Kem v PP* [1994] 2 MLJ 210, the Supreme Court followed *Cohen*. (Emphasis added.)

In our view, *Chow Kok Keong* is an important decision. Quite apart from the fact that it is binding on us, it demonstrates the importance of having regard to the facts of a particular case to determine whether the elements of H trafficking had been made out. It reminds us that the general definition of trafficking found in s 2 of the Act is subject to the context of the particular case. It restates in outline the route already taken by Lord Diplock in *Ong Ah Chuan v Public Prosecutor; Koh Chai Cheng v Public Prosecutor* [1981] 1 MLJ 64, at p 68:

I To 'traffic' in a controlled drug so as to constitute the offence of trafficking under s 3 involves something more than passive possession or self administration of the drug; it involves doing or offering to do an overt act of

one or other of the kinds specified in para (a) of the definition of 'traffic' and 'trafficking' in s 2. Even apart from any statutory definition, the ordinary meaning of the verb 'to traffic', in the particular context of trafficking in goods of any kind, imports the existence, either in fact or in contemplation, of at least two parties: a supplier and a person to whom the goods are to be supplied. This concept, involving transfer of possession, is reflected in the statutory definition itself. Of the seven verbs used to describe the various kinds of overt acts which constitute trafficking 'transport' is sandwiched between 'sell, give, administer' which precede it and 'send, deliver or distribute' which follow it. All of these other verbs refer to various ways in which a supplier or distributor, who has drugs in his possession, may transfer possession of them to some other person. 'Transport', although it must involve possession of the drugs by the person who transport them, is the only member of the heptad of verbs that is not inconsistent with the retention of possession of the drugs by him after their transport. It must mean moving the drugs from one place to another; it may mean moving them also to another person but it need not do so. Whether it bears the wider or the narrower meaning depends upon the context in which the verb appears. In their Lordships' view the immediate context of the verb 'transport', to which attention has been drawn, attracts the maxim *noscitur a sociis*. This, and the fact that it appears in the definition of the verb to 'traffic', of which the natural meaning in the context of trafficking in goods involves dealings between two parties at least, and that the evident purpose of the Act is to distinguish between dealers in drugs and the unfortunate addicts who are their victims, all combine to make it clear that 'transport' is not used in the sense of mere conveying or carrying or moving from one place to another but in the sense of doing so to promote the distribution of the drug to another. Supplying or distributing addictive drugs to others is the evil against which s 3 with its draconian penalties is directed.

The Court of Appeal of British Columbia in *R v McDonald* (1963) 43 WWR 337 at p 342, interpreted 'transport' in the virtually identical definition of 'traffic' in the Canadian Narcotic Control Act 1960–61, as bearing this restricted meaning and the same interpretation was adopted by the Court of Appeal of Newfoundland in *R v Greene* (1977) 74 DLR 3d 354. Acceptance of it is implicit in the *ratio decidendi* of the Court of Criminal Appeal of Singapore in *Wong Kee Chin*.

So, simply to transport from one place to another a quantity of a controlled drug intended for one's own consumption, if unauthorized by the Act or Regulations, involves an offence of having the drug in one's possession under s 6 but does not amount to the offence of trafficking under s 3. It is otherwise, however, if the transporter's purpose, whether it is achieved or not, is to part with possession of the drug or any portion of it to some other person whether already known to him or a potential purchaser whom he hopes to find. This is the consequence of s 10 of the Drugs Act and s 3(c) (which covers the same ground in part). These provisions make the question whether the transporter of the drugs achieves that purpose irrelevant to his guilt of the offence of trafficking under s 3; since they provide that a person who does any act preparatory to, or in furtherance of, or for the purpose of the commission of the offence of trafficking in a controlled drug, shall be guilty of the substantive offence of trafficking and liable on conviction to the penalty provided for it under s 29 and the Second Sch.

This is a very wide description of acts that may be treated as equivalent to the substantive offence of trafficking; nevertheless, in their Lordships' view,

it is clear from the structure of the Drugs Act and the distinction drawn between the offence of having a controlled drug in one's possession and the offence of trafficking in it, that mere possession of itself is not to be treated as an act preparatory to or in furtherance of or for the purpose of trafficking so as to permit the conviction of the possessor of the substantive offence. To bring the provisions of ss 10 and 3(c) into operation some further step or overt act by the accused is needed, directed to transferring possession of the drug to some other person; and it is a consequence of the clandestine nature of the drug trade and the means adopted for the detection of those engaged in it, that the further step that the prosecution is most likely to be able to prove in evidence is the act of the accused in transporting the drug to some place where he intends to deliver it to someone else, whether it be the actual consumer or a distributor or another dealer.

Proof of the purpose for which an act is done, where such purpose is a necessary ingredient of the offence with which an accused is charged, presents a problem with which criminal courts are very familiar. Generally, in the absence of an express admission by the accused, the purpose with which he did an act is a matter of inference from what he did. Thus, in the case of an accused caught in the act of conveying from one place to another controlled drugs in a quantity much larger than is likely to be needed for his own consumption the inference that he was transporting them for the purpose of trafficking in them would, *in the absence of any plausible explanation by him*, be irresistible — even if there were no statutory presumption such as is contained in s 15 of the Drugs Act.

As a matter of common sense the larger the quantity of drugs involved the stronger the inference that they were not intended for the personal consumption of the person carrying them, and the more convincing the evidence needed to rebut it. All that s 15 does is to lay down the minimum quantity of each of the five drugs with which it deals at which the inference arises from the quantity involved alone that they were being transported for the purpose of transferring possession of them to another person and not solely for the transporter's own consumption. There may be other facts which justify the inference even where the quantity of drugs involved is lower than the minimum which attracts the statutory presumption under s 15. In the instant cases, however, the quantities involved were respectively 100 times and 600 times the statutory minimum.

Whether the quantities involved be large or small, however, the inference is always rebuttable. The accused himself best knows why he was conveying the drugs from one place to another and, if he can satisfy the court, upon the balance of probabilities only, that they were destined for his own consumption he is entitled to be acquitted of the offence of trafficking under s 3. (Emphasis added.)

We have quoted at length from Lord Diplock's judgment to demonstrate the value of the direct evidence led before the learned judge and now in the record of appeal provided to us.

To summarize, the fact that the accused is transporting a quantity of drugs from one point to another does not make him a trafficker. Whether he is a trafficker in those circumstances depends on the facts and circumstances of the given case, including the quantity of the drugs and any transaction the accused proposed to enter into.

Applying the common sense approach laid down by Lord Diplock in *Ong Ah Chuan*, the learned judge's conclusion that the appellant was guilty of trafficking is abundantly justified.

This is how the learned judge put it at p 24 of his judgment:

> I find the story and the defence of the accused has not raised any reasonable doubt on the prosecution case that he was in exclusive control and custody of the cannabis in the car at about 4.30pm on 17 January 1997 and that he was aware of the nature of the cannabis in the car — that he was in possession of the cannabis — and that he transported the cannabis in the car from outside Kg Chubadak Dalam to Kg Chubadak Dalam, Sentul Pasar. I find him guilty on the charge save that the date and time of the offence is amended to read as occurring on 17 January 1997 at about 4.30pm. And I convict the accused on the charge.

We find counsel's attack on this finding by the learned judge to be without merit. It is plain and obvious from a reading of the judgment as a whole that the learned judge had the large quantity of drugs here in the forefront of his mind. The several passages in his judgment reflect the learned judge's satisfaction that the appellant could not have had such a large quantity of drugs in his possession, custody and control save for the purpose of trafficking it to others known or unknown. That explains the transporting by the appellant of the drug in the car in which it was found. For that reason we must with respect reject the arguments advanced to us by learned counsel for the appellant.

The amendment to the charge

We now turn to the third ground. There is really nothing on this point. Section 158 of the Criminal Procedure Code confers wide powers on a trial court at any level to amend the charge. What is important is that the amendment should not cause any prejudice to the accused or result in an injustice to him. We have read the judgment under appeal and scrutinized the record with great care and find the amendment to the charge to be justified. There is nothing the learned judge put in the charge which is not already there in the prosecution case. The appellant could not therefore have been taken by surprise.

We have taken a step back and looked at the evidence and considered the case as a whole. We have carefully scrutinized the judgment of the learned judge. We have carefully considered the submissions advanced by the appellant. At the end of the day, we are unable to detect any weakness in the prosecution's case or the manner in which the prosecution was conducted.

Drug trafficking is a very difficult offence to prove by direct evidence. We have on several occasions in this court, upset convictions for trafficking because those convictions were unsafe. The same cannot be said of the present appeal.

Before concluding these proceedings and pronouncing the formal orders, we need to make two observations. First, we express our gratitude

A to learned counsel and the learned deputy public prosecutor for their well researched and succinct arguments. But for their efforts this *ex tempore* judgment would not have been possible.

Secondly, we would be failing in our duty if we did not commend the police in this case. Their investigation and detection of the offence has been exemplary. We commend the action taken by Lance Coporal 115915 Mohd Zain bin Peng Cheng, ASP G/11068 Perumal a/l Alagan and Insp I/12449 Johari bin Abdullah. But for their efforts, 133 kg of cannabis would have found its way into the market. This court has always taken the view that while we are ready to criticize the police, we must be equally be ready to recognize good work when we see it.

C For the reasons given, this appeal fails. The appeal is dismissed. The conviction and sentence are affirmed.

Appeal dismissed.

Reported by Andrew Christopher Simon

D

E

F

G

H

I